

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

UNITED STATES OF AMERICA :

- v. - : INFORMATION

JASON SMATHERS, : 04 Cr.

Defendant. :

- - - - -x

COUNT ONE

(Conspiracy)

The United States Attorney charges:

1. From at least in or about April 2003, up to and including in or about April 2004, in the Southern District of New York and elsewhere, JASON SMATHERS, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to violate the laws of the United States, to wit, Title 18, United States Code, Sections 1037(a)(2), (b)(2)(C) and (b)(2)(E), and 2314.

1. It was a part and an object of the conspiracy that JASON SMATHERS, the defendant, and others known and unknown, unlawfully, willfully and knowingly, in and affecting interstate commerce, would and did use a protected computer to relay and re-transmit multiple commercial electronic mail messages, with the intent to deceive and mislead recipients, and

internet access services, as to the origin of such messages, in which the volume of electronic mail messages transmitted in furtherance of the offense exceeded 2,500 during a 24-hour period, 25,000 during a 30-day period, and 250,000 during a 1-year period, and as a result of which one and more of the co-conspirators obtained things of value aggregating \$5,000 and more during a 1-year period, in violation of Section 1037(a)(2), (b)(2)(C) and (b)(2)(E) of Title 18, United States Code.

2. It was a further part and an object of the conspiracy that JASON SMATHERS, the defendant, and others known and unknown, unlawfully, willfully and knowingly, would and did transport, transmit and transfer, in interstate and foreign commerce, goods, wares, merchandise, securities and money, of the value of \$5,000 and more, knowing the same to have been stolen, converted and taken by fraud, in violation of Section 2314 of Title 18, United States Code.

#### Overt Acts

3. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about May 19 and 20, 2003, JASON

SMATHERS obtained unauthorized access to an electronic database of America On Line in Virginia, and without permission, misappropriated a list of customer accounts for purposes of selling to others.

b. In or about May 2003, JASON SMATHERS sold the misappropriated list of America On Line customers referred to in the previous sub-paragraph to a co-conspirator not named as a defendant herein ("CC-1") who received the list in Nevada.

c. In or about May or June 2003, CC-1 sold the misappropriated list of America On Line customers referred to in the previous sub-paragraphs to another co-conspirator not named as a defendant herein ("CC-2").

d. In or about early 2004, CC-2 used the misappropriated America On Line customer list to send millions of unsolicited commercial electronic mail transmissions to America On Line customers in the Southern District of New York and elsewhere.

(Title 18, United States Code, Section 371.)

---

DAVID N. KELLEY  
United States Attorney